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10 INC. D/B/A LENSCRAFTERS, INC.

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 BRIAN KING, MATTHEW SMELSER and
15 DAWN CONE, individuals, on behalf of
16 themselves and all other similarly situated,

17 Plaintiffs,

18 v.

19 LENSCRAFTERS, INC., LUXOTTICA
19 GROUP S.P.A. and Does 1 through 100,

20 Defendants.

Case No. 3:09-cv-03081-SI

**LUXOTTICA RETAIL NORTH
AMERICA, INC.'S NOTICE OF
MOTION AND MOTION TO STAY
OF ACTION OR, IN THE
ALTERNATIVE, STAY OF
CALIFORNIA CLAIMS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: February 5, 2010
Time: 9:00 a.m.
Courtroom: 10
Judge: The Honorable Susan
Illston

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 **PLEASE TAKE NOTICE** that on February 5, 2010, at 9:00 a.m., or as soon
4 thereafter as the matter may be heard, before The Honorable Susan Illston, Defendant Luxottica
5 Retail North America, Inc. (“Defendant”) will, and hereby does, move this Court for an order
6 granting a stay of this action or, in the alternative, a stay of the California claims in this action
7 until a ruling on final approval of the settlement in *Felice Martinez v. LensCrafters, Inc.*, C08-
8 01699 PJH (“*Martinez*”), which is currently scheduled for a final approval hearing on April 14,
9 2010.

10 Defendant's motion for a stay of the action or, in the alternative, a stay of
11 California claims in the action is made on the grounds that a stay is necessary to avoid hardship
12 and inequity to Defendant, as well as a waste of party and judicial resources. In addition, the
13 requested stay will not harm Plaintiffs. Defendant's motion is based on this notice, the
14 accompanying memorandum of points and authorities, the Declaration of Julie A. Totten, the
15 pleadings and papers on file in this action, and such other evidence and argument as may be
16 presented at the hearing on the motion.

MEMORANDUM OF POINTS AND AUTHORITIES

18 Defendant Luxottica Retail North America, Inc. (“Defendant”) requests that the Court
19 issue a short stay in this action (“*King*”) until a ruling on the fairness of a settlement in the related
20 *Felice Martinez v. LensCrafters, Inc.*, C08-01699 PJH (“*Martinez*”), which is currently scheduled
21 for a final approval hearing on April 14, 2010. In the alternative, Defendant moves for a stay of
22 Plaintiffs’ claims brought under California law. Permitting the *King* action to proceed while a
23 decision on final approval of the *Martinez* settlement is pending will cause Defendant to suffer
24 hardship, and waste both party and Court resources. Accordingly, given that a stay will impose
25 no harm on Plaintiffs, the Court should order the brief stay requested by Defendant.

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1 **I. SUMMARY OF FACTS**

2 **A. The King And Martinez Matters**

3 *King* was filed with this Court by former managers of Lenscrafters on July 8, 2009. *See*
 4 Plaintiffs' Original Compl. In the action, Plaintiffs allege that Defendant misclassified its
 5 managers and "assistant managers" as exempt from overtime. *See* Plaintiffs' First Am. Compl.
 6 Plaintiffs seek to recover overtime, meal period premiums, penalties for allegedly inaccurate
 7 itemized wage statements, waiting time penalties, and restitution under California Business and
 8 Professions Code section 17200 on behalf of California managers and "assistant managers." *See*
 9 Plaintiffs' First Am. Compl. at Causes of Action One through Five. In addition, Plaintiffs assert a
 10 cause of action for violation of the Fair Labor Standards Act, seeking to recover overtime on
 11 behalf of nationwide managers and "assistant managers." *See id.* at Cause of Action Six.

12 Approximately one-and-a-half years prior to *King*, Defendant was sued in the *Martinez*
 13 action. *Martinez* was originally filed in the Superior Court for the State of California, County of
 14 Alameda on February 14, 2008, and then removed to the Northern District of California. *See*
 15 Declaration of Julie A. Totten in Support of Defendant's Motion to Stay ("Totten Decl."), ¶ 2.
 16 Like *King*, *Martinez* was brought by a former manager of Lenscrafters. *Id.* Also like *King*, the
 17 plaintiff in *Martinez* alleges that Defendant's California salaried managers and "assistant
 18 managers" were misclassified and therefore seek to recover overtime, meal period premiums,
 19 penalties for allegedly inaccurate itemized wage statements, waiting time penalties, and
 20 restitution under California Business and Professions Code section 17200. *Id.*, ¶2, Exh. A. After
 21 considerable litigation, the *Martinez* parties agreed to a settlement of the claims in that action on
 22 June 16, 2009. *See id.*, ¶ 2.

23 **B. The Parties In *King* Move To Relate The Cases**

24 At the outset of the *King* matter, Defendant filed an administrative motion to relate the
 25 cases. *See* Defendant's Administrative Motion To Relate Cases filed Sept. 28, 2009. The *King*
 26 Plaintiffs agreed that the matters should be related, filing a declaration in support of Defendant's
 27 Administrative Motion on October 8, 2009. *See* Declaration of Tim Hoffman filed Oct. 8, 2009.
 28 No party opposed the administrative motion. Nonetheless, Judge Hamilton denied the

1 administrative motion on October 20, 2009. *See* Court Order dated Oct. 20, 2009. Subsequently,
 2 Judge Hamilton noted that her basis for the denial is that the parties in the *Martinez* action have
 3 agreed to settle their claims and, if approved, the action will not continue. Totten Decl., ¶ 4.
 4 Judge Hamilton expressed no concerns that the *King* and *Martinez* actions do not contain nearly
 5 identical claims nor affect overlapping groups of Defendant's former and current employees. *Id.*

6 C. The *Martinez* Settlement

7 Following agreement to settlement terms in the *Martinez* action, the *Martinez* parties
 8 sought preliminary approval of their settlement. The *King* Plaintiffs filed an opposition and
 9 appeared at the hearing on the preliminary approval motion, arguing that the court should not
 10 grant preliminary approval of the settlement. *Id.*, ¶ 3. The court nonetheless preliminarily
 11 approved the settlement. *Id.* The *Martinez* parties are currently administering their settlement,
 12 and the motion for final approval is scheduled for April 14, 2010. *See id.*

13 II. THE COURT SHOULD STAY THE KING ACTION.

14 As case law has long recognized, federal courts have wide discretion to stay actions in
 15 order to avoid duplicative proceedings. *See Landis v. North American Co.*, 299 U.S. 248, 254-55
 16 (1934) (“the power to stay proceedings is incidental to the power inherent in every court to
 17 control the disposition of the causes on its docket with economy of time and effort for itself, for
 18 counsel, and for litigants.”). The Ninth Circuit has expressly endorsed this view, stating that a
 19 “trial court may, with propriety, find it is efficient for its own docket and the fairest course for the
 20 parties to enter a stay of an action before it, pending resolution of independent proceedings which
 21 bear upon the case.” *Mediterranean Enterprises, Inc. v. Sangyoung Corp.*, 708 F.2d 1458, 1465
 22 (9th Cir. 1983). Factors relevant to determining whether to stay an action include:

23 ... the possible damage which may result from the granting of a stay, the hardship
 24 or inequity which a party may suffer in being required to go forward, and the
 25 orderly course of justice measured in terms of the simplifying or complicating of
 issues, proof, and questions of law which could be expected to result from a stay.

26 *Fuller v. Amerigas Propane, Inc.*, 2009 WL 2390358, *4 (N.D. Cal. Aug. 3, 2009) (citations
 27 omitted). Applying these factors here, the court should exercise its discretion to stay the *King*
 28 action (or, in the alternative, the California claims) pending a ruling on final approval of the

1 *Martinez* settlement.

2 **A. Plaintiffs Will Not Be Harmed If The Court Grants Defendant's Motion
3 To Stay.**

4 The first factor the court should consider in analyzing whether to issue a stay is the extent
5 of harm incurred by issuing the stay. *See id.* Here, a stay would not cause Plaintiffs to incur any
6 harm. First, the period of time that the stay is requested is finite and short in duration.
7 Specifically, the final approval hearing in *Martinez* is currently scheduled for April 14, 2010. *See*
8 Totten Decl., ¶ 3. Thus, Defendant anticipates that final approval of the *Martinez* settlement will
9 be decided within approximately the next four months. This time period is quite short, especially
10 when compared to the significant potential offered by a stay for avoiding unnecessary duplication
11 of party and court resources. *See Fuller*, 2009 WL 2390358, *4 (finding no meaningful prejudice
12 where case in early procedural stage and reason for stay likely to be resolved within few months).

13 The lack of harm imposed by the short requested stay is highlighted by the fact that there
14 has been little activity thus far in the *King* action. Indeed, despite the passage of five months
15 since Plaintiffs filed their original Complaint, the parties have not finalized the pleadings. (The
16 parties stipulated to extend Defendant's deadline to respond to the First Amended Complaint to
17 January 15, 2010 in light of Plaintiffs' intention to file a Second Amended Complaint. *See*
18 Stipulation filed Dec. 23, 2009.) Moreover, in the parties' Joint Case Management Statement,
19 Plaintiffs did not seek to file their motion for class certification until July 1, 2010. (Defendant
20 agreed with Plaintiffs' requested deadline.) *See* Case Management Conference Statement filed
21 Nov. 16, 2009. Consistent with the parties' request, the Court ordered Plaintiffs to file their
22 motion for class certification no later than July 1, 2010. *See* Court Order dated Nov. 24, 2009.

23 Given the fact that there is ample time before any class certification motion is due,
24 Plaintiffs would not face any harm if the Court grants a stay. Nonetheless, if Plaintiffs request,
25 Defendant is willing to continue case deadlines in light of the requested stay.

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1 **B. Defendant Will Suffer Hardship And Inequity If *King* Is Permitted To**
 2 **Go Forward During The Pendency Of The *Martinez* Settlement.**

3 The Court should also consider the hardship incurred if a stay is denied and the matter is
 4 permitted to move forward. *See Fuller*, 2009 WL 2390358, *4. Here, allowing the matter to
 5 move forward would require Defendant to actively litigate claims that have already been
 6 preliminarily approved for settlement by the Northern District. Defendant has already expended
 7 considerable resources litigating the *Martinez* matter. Totten Decl., ¶ 2. It is inequitable to
 8 require Defendant to incur these very same costs and efforts to repeat this litigation, only to
 9 determine in four months that the current litigation is unnecessary because the *Martinez*
 10 settlement undercuts the *King* action to a significant degree. Indeed, should the *Martinez* court
 11 grant final approval of the settlement in that action, virtually all of the *King* Plaintiffs' allegations
 12 with regard to California employees will be rolled into the *Martinez* settlement and there will be
 13 little left of the *King* claims. On the other hand, should the *Martinez* court deny final approval
 14 and the case continue to proceed, there is a good chance given the overlap of the cases and past
 15 positions of the involved parties that the cases would be related or consolidated.¹ In this case,
 16 Defendant will have already incurred the hardship of litigating a case unnecessarily on two fronts.

17 **C. Proceeding With The *King* Action During The Short Pendency Of The**
 18 ***Martinez* Settlement Is A Waste Of Both Party And Judicial Resources.**

19 Finally, in determining whether to issue a stay, the court should consider the "orderly
 20 course of justice measured in terms of the simplifying or complicating of issues, proof and
 21 questions of law which could be expected to result from a stay." *See Fuller*, 2009 WL 2390358,
 22 *4. Courts have characterized this factor as a question of economy. *See id.* (citing *Rivers v. Walt*
 23 *Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).

24 Here, judicial economy strongly favors issuing the stay. As discussed, *King* and *Martinez*
 25 allege identical claims with regard to California employees – *i.e.*, that Defendant misclassified its
 26 exempt managers. Final approval of the *Martinez* action would virtually wipe out Plaintiffs'

27 ¹ In the event that the Court eventually relates or consolidates *Martinez* and *King*, Defendant
 28 would likely renew its motion to stay the California claims in *King*.

1 California claims because the *Martinez* settlement would have a preclusive effect in *King* on all
 2 but those who opt out of the settlement. For this reason alone, the stay is warranted. *See, e.g.*,
 3 *CMAX, Inc. v. Hall*, 300 F.2d 265 (9th Cir. 1962) (denying writ of mandamus to overturn stay
 4 where trial postponed pending administrative proceeding that may affect pending litigation);
 5 *Chartener v. Provident Mutual Insur. Co.*, 2003 U.S. Dist. LEXIS 19500 (E.D. Penn. Oct. 23,
 6 2003) (staying securities class action pending resolution of appeal of settlement of another class
 7 action where court in stayed action would need to undertake res judicata/ estoppel analysis once
 8 settlement final).

9 Furthermore, as noted above, even if the *Martinez* court does not grant final approval of
 10 the settlement, current litigation in *King* will likely duplicate the parties' and court's efforts in the
 11 *Martinez* action. *See Lindley v. Life Investors Insur. Co. of America*, 2009 U.S. Dist LEXIS
 12 94623 (N.D. Okl. Oct. 9, 2009) (staying class action pending fairness hearing of settlement in
 13 another class action where approval of settlement likely to have res judicata/ estoppel effect on
 14 class action stayed, and denial of approval likely to affect plaintiff's argument for class
 15 certification in stayed action). This is especially likely here in light of the nearly identical nature
 16 of the California claims, as well as the contrast between the status of *King* (in which the parties
 17 are still at the pleading stage) and *Martinez* (in which the parties have engaged in extensive
 18 litigation and discovery). Totten Decl., ¶ 2. This likelihood for unnecessary duplication further
 19 reinforces that a stay is appropriate in this case. *Fuller*, 2009 WL 2390358, *6 ("Duplication of
 20 case management tasks by multiple courts is not an economical use of judicial resources.").

21 In sum, regardless of the outcome of the *Martinez* settlement, it is likely that any present
 22 proceedings in *King* will ultimately be either unnecessary or duplicative of prior litigation. As
 23 such, any proceedings are a waste of both judicial and party resources. Accordingly, the court
 24 should grant Defendant's motion to stay the action or, at a minimum, Plaintiffs' California claims.

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1 **III. CONCLUSION**

2 For the foregoing reasons, Defendant respectfully requests that this Court stay the *King*
3 action or, in the alternative, stay Plaintiffs' California claims (Causes of Action One through Five
4 in Plaintiffs' First Amended Complaint).

5 Dated: December 28, 2009

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10 /S/ Sara E. Dionne

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